

Ref.: IAI 07/2020

Report issued at the request of the Commission for the Guarantee of the Right of Access to Public Information in relation to the claim submitted by a citizen for the denial of access to information relating to a disciplinary file.

The Commission for Guaranteeing the Right to Access to Public Information (GAIP) asks the Catalan Data Protection Authority (APDCAT) to issue a report on a claim submitted by a citizen for the denial of access to information about the data relating to a disciplinary file.

Having analyzed the request, which is accompanied by a copy of the administrative file processed before the GAIP, and in accordance with the report of the Legal Counsel I issue the following report.

#### Background

1. On December 24, 2019, a citizen submits a letter to the competent body in traffic matters in which he requests:

"File for violation of the traffic rule with number (...), without including or concealing personal data such as number and last name and ID card.

Notice of violation of the urban traffic rule with number (...) without including or concealing personal data such as number and surname and ID card.

Place and reason for the sanction.

Speed at which the vehicle was traveling and the maximum speed allowed in that area Radar photograph if there was one."

2. On February 3, 2020, the interested party is notified of a decision denying access to the requested data.

3. On February 19, 2020, the interested party submits a claim to the GAIP, in which he states that he has not been given the information and reiterates his request.

4. On March 6, 2020, the GAIP requests this Authority to issue the report provided for in article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good government, in relation to the claim presented.

#### Legal Foundations

I

In accordance with article 1 of Law 32/2010, of October 1, of the Catalan Authority of Data Protection, the APDCAT is the independent body that aims to guarantee, in the field

of the competences of the Generalitat, the rights to the protection of personal data and access to the information linked to it.

Article 42.8 of Law 19/2014, of December 29, on transparency, access to public information and good governance, which regulates the claim against resolutions on access to public information, establishes that if the refusal has been based on the protection of personal data, the Commission must issue a report to the Catalan Data Protection Authority, which must be issued within fifteen days.

For this reason, this report is issued exclusively with regard to the assessment of the incidence that the requested access may have with respect to the personal information of the persons affected. Therefore, any other limit or aspect that does not affect the personal data included in the requested information is outside the scope of this report.

The deadline for issuing this report may lead to an extension of the deadline to resolve the claim, if so agreed by the GAIP and all parties are notified before the deadline to resolve ends.

Consequently, this report is issued based on the aforementioned provisions of Law 32/2010, of October 1, of the Catalan Data Protection Authority and Law 19/2014, of December 29, of transparency, access to public information and good governance.

In accordance with article 17.2 of Law 32/2010, this report will be published on the Authority's website once the interested parties have been notified, with the prior anonymization of personal data.

## II

Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data (hereinafter, RGPD), extends its scope of protection to personal data understood as all information about an identified or identifiable natural person, and considers an identifiable natural person "any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, como por ejemplo a number, an identification number, location data, an online identifier or one or more elements of the physical, physiological, genetic, psychological, economic, cultural or social identity of said person." (Article 4.1 of the RGPD).

In accordance with article 6.1 of the RGPD, in order to carry out a treatment, it is necessary to have a legal basis that legitimizes this treatment, either the consent of the affected person, or any of the other circumstances, such as "the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment" (letter c).

Law 19/2014, of 29 December 2014, on transparency, access to information and good governance, aims to regulate and guarantee the transparency of public activity.

Article 18 of Law 19/2014 establishes that "people have the right to access public information, referred to in article 2.b, individually or in the name and representation of any legal entity constituted" (section 1). The mentioned article 2.b) defines "public information" as "the information prepared by the Administration and that which it has in its power as a result of its activity or the exercise of its functions, including the which are supplied by the other obliged subjects in accordance with the provisions of this law".

The body competent in traffic matters is an autonomous body of an administrative nature (...) that was created through (...) Law, it has, among others, the function of instructing and resolving sanctioning files that are fined for infractions committed against traffic regulations, vehicle circulation and road safety.

To the extent that the competent body in traffic matters has the requested information, it is information that must be considered public for the purposes of article 2.b) of the LTC and, therefore, remains subject to the right of access (art. 18 of the LTC).

The right of access to public information can oblige the Administration to transfer personal data of third parties without the need to have their consent. This right, however, is not absolute and may be denied or restricted for the reasons expressly established in the laws. Specifically, and with regard to the right to the protection of personal data, it is necessary to take into account the limitations and criteria provided for in the transparency legislation (articles 23 and 24 of the LTC), and the principles of the data protection regulations personal

### III

In this case, the claimant requests access to the traffic ticket file (...), specifically, information was requested regarding the complaint ticket, the place and reason for the penalty, the speed at which the vehicle was traveling, as well as the maximum speed allowed in the area and the radar photograph. It is expressly stated in the request for information that the requested information does not include personal data such as the first and last name or the DNI.

Article 23 of the LTC states that "requests for access to public information must be denied if the information sought contains particularly protected personal data, such as those relating to ideology, trade union affiliation, religion, beliefs, racial origin, health and sex life, and also those relating to the commission of criminal or administrative offenses that do not entail a public reprimand to the offender, unless the affected party expressly consents to it by means of a written document that must accompany the request."

In the same sense, article 15.1, paragraph two, of Law 19/2013, of December 9, on transparency, access to public information and good governance (LT), establishes that "if the information includes personal data that refer to racial origin, health or sexual life, include genetic or biometric data or contain data relating to the commission of criminal or administrative offenses that did not lead to a public reprimand to the offender, access may only be authorized in the event that it is counted with the express consent of the person affected or if he was protected by a rule with the rank of law."

The LTC excludes the possibility of accessing information related to the commission of criminal or administrative infractions, unless the sanction or penalty entails a public reprimand to the offender or the express consent of the person affected at the time of formulating the request. In this regard, the data requested by the claimant contain information relating to the person or person reported for an alleged commission of an administrative offense in traffic matters and it is not known that in the present case such consent has been provided.

Thus, from the point of view of data protection regulations, the claimant's access to the requested information must be denied based on what is provided for in article 23 of the LTC.

It should be noted that the transparency regulations enable the possibility of giving access to public information with the prior anonymization of personal data (article 15.4 LT). In this case, the claimant requests the information excluding the name, surname and ID of the infringing person. It must be said, however, that anonymization would not be a viable mechanism to provide access to information, given that, in view of the terms in which public information is requested, in particular the fact that the number of a specific file number cannot be considered that the simple omission of personal data such as the name and surname or the no. of ID may be sufficient to consider that the information provided is anonymous.

In this sense, it should be remembered that the data protection regulations apply not only to the information of directly identified persons, but also to those persons who are indirectly identifiable (art. 4.1 RGPD). According to Recital 26 of the RGPD, "To determine whether a natural person is identifiable, all means, such as identification, that can reasonably be used by the controller or any other person to identify directly or indirectly to the natural person. To determine whether there is a reasonable probability that means will be used to identify a natural person, all objective factors must be taken into account, such as the costs and time required for identification, taking into account both the technology available at the time of the treatment like technological advances."

And article 4.1 RGPD establishes:

"any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a number, an identification number, location data, an online identifier or one or several elements of the physical, physiological, genetic, psychological, economic, cultural or social identity of said person;

In a case, like the one we are dealing with, despite the fact that the data relating to the name and surname and the number are deleted. of DNI, it cannot be ruled out that, due to the other circumstances included in the file or, especially, due to the fact that the applicant already knows the file number to which the requested information refers, it cannot be rule out that the applicant may end up identifying the person reported or sanctioned. Therefore, Article 23 LTC would prevent access to this information.

**conclusion**

**The data protection regulations prevent the claimant's access to the requested data, in application of the limitation provided for in article 23 of the LTC, unless the affected person gives his consent.**

**Barcelona, April 3, 2020**

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